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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,594	02/12/2002	James D. Decker	117-P35USU1	4861
7590	07/06/2004		EXAMINER CHAUDHRY, SAEED T	
Robin A. Sannes IPLM Group, P.A. P.O. Box 18455 Minneapolis, MN 55418			ART UNIT 1746	PAPER NUMBER

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,594

Applicant(s)

DECKER ET AL.

Examiner

Saeed T Chaudhry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,10,15 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10,15 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendments and remarks filed April 21, 2004 have been acknowledged by the examiner and entered. Claims 1-2 and 21-22 have been withdrawn as being directed to a non-elected invention, claims 3-9, 11-14, 16-21 and 24-26 have been canceled and claims 10, 15, and 23 are pending in this application for consideration.

Claims 1-2 and 21-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 21, 2004.

Double Patenting

Claims 10, 15 and 23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 and 16 of U.S. Patent No. 6,260,772 in view of Herrick.

Hennemann, Jr. et al (6,260,772) claims a dispensing gun for dispensing water received from a water supply and for dispensing a product diluted in the dispensing gun with water received from the water supply, comprising:

- a. a hose member, said hose member including a first channel;
- b. a dispensing gun including a handle, said gun including a water inlet, a water outlet, and a hose receiving member operatively connected to said first channel of said hose member, said first channel in fluid communication with said water inlet, said gun receiving a water supply via said first channel of said hose member;
- c. an aspirator in fluid communication with said water outlet, said aspirator having an outlet,

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d. a product supply in fluid communication with said aspirator, wherein said aspirator creates a use solution of product diluted with water from said water outlet, said use solution exiting the outlet of the aspirator;

e. a first nozzle operatively connected to said water outlet to dispense water from said water outlet; and

f. a first valve in fluid communication with said water outlet and said first nozzle and a second valve in fluid communication with said water outlet and said aspirator, said first valve controlling flow of water via said first channel and said second valve controlling flow of water via said first channel through said aspirator, wherein said first valve allows water to flow from said water outlet through said first nozzle, and wherein said second valve allows water to flow from said water outlet into said aspirator and said use solution created therein to flow through said outlet of said aspirator.

The dispensing gun of claim 14, further comprising a third valve and a second product supply in fluid communication with a second aspirator, said second aspirator being in fluid communication with said water outlet and having an outlet, wherein said second aspirator creates a use solution of said second product supply diluted with water from said water outlet, said third valve interconnecting said water outlet and said second aspirator for controlling water via said first channel and second product, said use solution is dispensed from said outlet of said second aspirator, wherein said third valve allows water to flow from said water outlet into said second aspirator and said use solution created therein to flow through said outlet of said second aspirator.

The instant claims uses “a channel” and 772’ reference uses “a first channel” , wherein the scope of the instant claim is same as of the claim 14 of 772’. Further, 772, uses “water outlet” instead of channel but in step b of 772 and instant claim 10 disclose that “said channel is operatively connected to said first channel of said hose member, said channel in fluid communication with said water inlet, said gun receiving a water supply via said first channel of said hose member”. Therefore, “water outlet” reads on the channel.

However, the reference did not claim that a product pouch containing product connected to gun and aspirator.

Herrick (4,029,260) discloses a cleaning, rinsing and sanitizing apparatus for cleaning and sanitizing food preparation equipment which includes a mounted or portable spray system, including connecting hose, appropriate valving, and a proportionaire or metering valve for selectively mixing incoming streams of water and a selected chemical or chemicals. The system apparatus includes at least two chemical supply tanks (pouch) with connecting hoses in valved cooperation with the proportionaire valve, such that any one or a combination of chemicals, as desired, can be simultaneously introduced into the proportionaire valve and thence to the spray nozzle in selected concentrations (see abstract).

The cleaning and sanitizing apparatus of this invention, generally indicated by reference numeral 1 is disclosed, with water inlet 2, which represents a conventional faucet connection found in substantially all establishments. Water inlet hose 3 is coupled to water inlet 2 by means of inlet quick coupler 4 for instant connection and disconnection of water inlet hose 3 to a source of water. Hose clamp 5 serves to couple water inlet hose 3 to proportionaire valve 7 by means of proportionaire water inlet fitting 8. Hose clamp screw 6 permits ready changing of

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either proportionaire valve 7 or water inlet hose 3, on a periodic basis as the need arises.

Proportionaire valve 7 is also equipped with proportionaire chemical inlet fitting 9 which "tees" into proportionaire valve 7, as illustrated. Proportionaire valve outlet fitting 10 is disposed opposite proportionaire valve water inlet fitting 8, and serves to carry outlet hose 11 by means of hose clamp 5, equipped with hose clamp screw 6. Outlet hose spring 12 is disposed concentrically on outlet hose 11 to minimize fatigue failure of outlet hose 11 at or near its point of juncture with hose clamp 5 and proportionaire valve outlet fitting 10. Outlet quick coupler 13 is carried by the discharge end of outlet hose 11, and serves to permit quick attachment and release of pistol valve 14, fitted with nozzle 15, trigger 16 and handle 17, for convenient, controlled, and direct spraying.

Chemical inlet hose 18 is connected to proportionaire valve chemical inlet fitting 9 by means of hose clamp 5, and to "tee" fitting 19 by means of tee discharge 20 and another hose clamp 5. To first tee leg 21 is fitted first tee leg nipple 23, and to second tee leg 22 is threaded second tee leg nipple 24, to form two legs of a preferred chemical introduction system. First chemical valve 25 is coupled to first tee leg nipple 23 and second chemical valve 26 is carried by second tee leg nipple 24. In similar manner, first chemical hose 34 spans the distance between and connects first chemical valve 25 and first chemical tank bung 38 of first chemical tank 36. Second chemical hose 35 connects second chemical valve 26 and second chemical tank bung 39 of second chemical tank 37. Hose clamps 5 serve to secure the chemical hoses to the respective valves, and the valves may be internally threaded to receive the tee leg nipples, respectively.

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Optional mounting board 29 is designed to carry cleaning and sanitizing apparatus 1 by means of mounting wires 30, secured to mounting board 29 by means of mounting wire screws 31. Mounting bracket 32 is also secured to mounting board 29 to provide a convenient point from which to suspend pistol valve 14. Mounting board apertures 33 are provided to facilitate hanging mounting board 29 on a suitable wall or cabinet near the equipment to be cleaned, rinsed and sanitized (see col. 3, lines 11-66). The mounting board is equivalent to a caddy since it holds the aspirator and tanks for holding the chemicals.

It would have been obvious at the time applicant invented the claimed apparatus to include product pouch or tank for holding aspirator and product supply as disclosed by Herrick in the apparatus of Hennemann, Jr. et al for the purpose of mixing the product with water before it enters into the gun which requires only one line to the gun and is easy to handle the gun.

The non-statutory double patenting rejection, whether of the obvious-type or non-obvious-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornam*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (b) and © may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78 (d).

Effective January 1, 1994, a registered attorney or agent of record may sign a Terminal Disclaimer. A Terminal Disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) he has abandoned the invention.

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

(f) he did not himself invent the subject matter sought to be patented.

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Claims 10 are rejected under 35 U.S.C. § 102(b) as being anticipated by Spriggs et al.

Spriggs et al (5,344,074) disclose a dispensing gun for dispensing water from a water supply and for dispensing a product diluted in the dispensing gun with water received from the water supply. A dispensing device (10, 150) containing a removable proportioning means such as an aspirator assembly (40, 154). A concentrate pickup tube (114) attaches to the dispensing device and is in fluid communication with the aspirator assembly. The dispensing device can utilize a rigid outlet tube (20, 159) which is removably attached to nozzle tip (18, 158) for dispensing to large containers (see abstract).

The spray gun 10 has a water control valve or shut-off valve 82. To initiate water flow, the lever 26 is pivoted toward handle 22 and bears against a cap 32 threaded on the outer end of the valve stem 84, so that by manually pressing on the lever 26, the valve 82 will be removed from its valve seat (not shown) to permit the flow of water (see col. 5, lines 41-47).

As FIG. 2 shows, disposed within the cylindrical portion 14 of barrel housing 12 is a conduit housing 38, having an extension member 44, a venturi body 50, and a bushing 46 which surrounds a diverter member 70. A removable proportioning means such as aspirator 40 is removably disposed in conduit housing 38 through extension member 44 and into aperture 51. Aspirator 40 has a protruding conduit stem 42 which quick connects with a concentrate pickup tube 114 (see FIG. 3). As shown in FIG. 3, the venturi body 50 has channels 54 and 55 extending through it. Conduit stem 42 of aspirator 40 has channel 59 disposed within it and is in fluid communication with metering orifice 58 located within connector portion 56 of aspirator 40. Orifice 58 is in fluid communication with aspirator throat 62. Throat 62 is in fluid communication with channel 60, thereby allowing the concentrate product to be drawn into the spray gun 10 when water flows through channels 54 and 55. In this embodiment, channel 60 is located in aspirator 40 at the opposite end from stem 42. Channels 59, 60 and orifice 58 can vary in diameter based on the dilution rate that is desired. Channel 59 in stem 42 can have a removable metering tip 61 disposed in its inlet end. Metering tip 61 has a channel 63 which can vary in diameter based on the rate of concentrate chemical flow desired (see col. 6, lines 14-58).

FIGS. 4-7 illustrate a diluting and dispensing system 100 which utilizes the spray gun 10 described above. The spray gun 10 is attached to a water supply hose 30 which is interconnected to a suitable water source (see col. 7, lines 30-33). Each product use container

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113 has a pickup tube 114 which extends into the bottom of the container 113. The front panel 108 holds tubes 114 for easy identification and convenience. The lower end of each pickup tube 114 has a check valve (not shown) within the product container 113, such as an umbrella check valve (see col. 8, lines 1-6). Spriggs et al disclose all the limitation such as product pouch or container (113) as claimed herein. Therefore, claims are anticipated by Spriggs et al.

Claims 10, 15 and 23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Herrick.

Herrick (4,029,260) discloses a cleaning, rinsing and sanitizing apparatus for cleaning and sanitizing food preparation equipment which includes a mounted or portable spray system, including connecting hose, appropriate valving, and a proportionaire or metering valve for selectively mixing incoming streams of water and a selected chemical or chemicals. The system apparatus includes at least two chemical supply tanks with connecting hoses in valved cooperation with the proportionaire valve, such that any one or a combination of chemicals, as desired, can be simultaneously introduced into the proportionaire valve and thence to the spray nozzle in selected concentrations (see abstract).

The cleaning and sanitizing apparatus of this invention, generally indicated by reference numeral 1 is disclosed, with water inlet 2, which represents a conventional faucet connection found in substantially all establishments. Water inlet hose 3 is coupled to water inlet 2 by means of inlet quick coupler 4 for instant connection and disconnection of water inlet hose 3 to a source of water. Hose clamp 5 serves to couple water inlet hose 3 to proportionaire valve 7 by means of proportionaire water inlet fitting 8. Hose clamp screw 6 permits ready changing of either proportionaire valve 7 or water inlet hose 3, on a periodic basis as the need arises.

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Proportionaire valve 7 is also equipped with proportionaire chemical inlet fitting 9 which "tees" into proportionaire valve 7, as illustrated. Proportionaire valve outlet fitting 10 is disposed opposite proportionaire valve water inlet fitting 8, and serves to carry outlet hose 11 by means of hose clamp 5, equipped with hose clamp screw 6. Outlet hose spring 12 is disposed concentrically on outlet hose 11 to minimize fatigue failure of outlet hose 11 at or near its point of juncture with hose clamp 5 and proportionaire valve outlet fitting 10. Outlet quick coupler 13 is carried by the discharge end of outlet hose 11, and serves to permit quick attachment and release of pistol valve 14, fitted with nozzle 15, trigger 16 and handle 17, for convenient, controlled, and direct spraying.

Chemical inlet hose 18 is connected to proportionaire valve chemical inlet fitting 9 by means of hose clamp 5, and to "tee" fitting 19 by means of tee discharge 20 and another hose clamp 5. To first tee leg 21 is fitted first tee leg nipple 23, and to second tee leg 22 is threaded second tee leg nipple 24, to form two legs of a preferred chemical introduction system. First chemical valve 25 is coupled to first tee leg nipple 23 and second chemical valve 26 is carried by second tee leg nipple 24. In similar manner, first chemical hose 34 spans the distance between and connects first chemical valve 25 and first chemical tank bung 38 of first chemical tank 36. Second chemical hose 35 connects second chemical valve 26 and second chemical tank bung 39 of second chemical tank 37. Hose clamps 5 serve to secure the chemical hoses to the respective valves, and the valves may be internally threaded to receive the tee leg nipples, repectively.

Optional mounting board 29 is designed to carry cleaning and sanitizing apparatus 1 by means of mounting wires 30, secured to mounting board 29 by means of mounting wire screws

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31. Mounting bracket 32 is also secured to mounting board 29 to provide a convenient point from which to suspend pistol valve 14. Mounting board apertures 33 are provided to facilitate hanging mounting board 29 on a suitable wall or cabinet near the equipment to be cleaned, rinsed and sanitized (see col. 3, lines 11-66). The mounting board is equivalent to a caddy since it hold the aspirator and tanks for holding the chemicals. Herrick discloses all the limitations as claimed herein. Therefore, claims apparatus is anticipated by Herrick.

Response to Applicant's Arguments

The applicant argued that claims 10, 15 and 23 has been amended to recite that the product supply is attached to the dispensing gun and inlet of the aspirator, which is neither taught nor suggested by the references of record.

This argument is nor persuasive because Herrick and Springgs et al both disclose product containers (pouch) which are connected to the gun and aspirator as claimed herein.

Applicant's arguments filed April 21, 2004 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeed T. Chaudhry whose telephone number is (571) 272-1298. The examiner can normally be reached on Monday-Friday from 9:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Michael Barr, can be reached on (571)-272-1414. The fax phone number for non-final is (703)-872-9306.

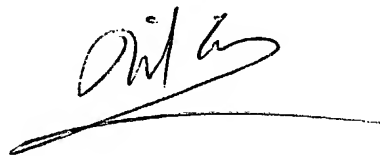
When filing a FAX in Gp 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are for entry into the file of the application. This will expedite processing of your papers.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1700.

Saeed T. Chaudhry

Patent Examiner

**MICHAEL BARR
PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read "Michael Barr", with a long horizontal flourish extending to the right.